

ARB/CAPCOA COMPLAINT RESOLUTION PROTOCOL

OCTOBER 2002

Background

On December 13, 2001, the California Air Resources Board (ARB) approved *Policies and Actions for Environmental Justice*, and made specific commitments related to the Policies. One such commitment was to work with the local air districts and other interested stakeholders to review and improve existing complaint resolution protocols. The ARB's Environmental Justice Stakeholders Group, which contributed to the successful development of the Environmental Justice Policies, was chosen as the appropriate forum in which to review and improve the complaint resolution protocols.

Purpose of Protocol

The intent of the Protocol is to ensure timely and effective resolution of air pollution complaints and to inform the public of the process. This Protocol specifically applies to the ARB and major urban air districts, but the general process outlined in the Protocol will be utilized by all local air districts.

Much of the information included in the Protocol can be found in policy documents and enforcement manuals at the air districts and ARB; in the bylaws of CAPCOA (California Air Pollution Control Officers Association); and in other sources, such as ARB's program-audit criteria for districts.

Development of the Complaint Resolution Protocol

Identifying the existing complaint resolution protocols of the local air districts and ARB was the first step in developing the Protocol. Based on information supplied by CAPCOA, ARB staff summarized existing complaint-resolution practices and presented the information to the EJ Stakeholders. The Stakeholders then discussed the current protocols and recommended modifications. The Complaint Resolution Protocol is an outcome of this collaborative effort.

The four elements of the document are:

- Overall Roles and Responsibilities under State Law
- Complaint Resolution Protocol Agreement
- ARB/District Roles Regarding Enforcement and Complaint Resolution
- Appendix

ARB/CAPCOA COMPLAINT RESOLUTION PROTOCOL

I. Overall Roles and Responsibilities under State Law

Responsibility for controlling air pollution in California is shared among the U.S. Environmental Protection Agency (EPA), the California Air Resources Board (ARB), and local air districts. U.S. EPA has the authority to control emissions from certain sources under exclusive federal jurisdiction, such as aircraft, marine vessels, and locomotives. U.S. EPA also has oversight authority for state programs as they relate to the Clean Air Act.

ARB is a State agency. ARB is responsible for controlling emissions from mobile sources (e.g., cars, trucks, and buses) and consumer products, and for developing fuel specifications. ARB also establishes statewide control measures for air toxics, which are then implemented and enforced by local air districts. ARB provides technical support to local air districts, and oversees local air district permitting and enforcement programs through training opportunities and routine programmatic audits.

The 35 local air districts are primarily responsible for controlling emissions from industrial facilities, such as power plants, refineries, and manufacturing operations. They also have primary responsibility for smaller facilities located in neighborhoods: for example, dry cleaners, service stations, and commercial paint applicators like autobody shops. The local air districts regulate these sources, which are referred to as “stationary sources.” They can also regulate certain mobile sources that are a part of a business that operates a fleet of vehicles, such as diesel trucks or school buses. They conduct routine inspections, respond to public complaints, and take enforcement actions if there is noncompliance with applicable rules and permit conditions.

Because local air districts have responsibility for regulating and permitting industrial and commercial facilities, they are the primary and appropriate agencies to contact regarding complaints. For example, the South Coast Air Quality Management District (AQMD) receives more than 8,000 complaints per year, and the Bay Area AQMD receives more than 3,000 complaints per year. By comparison, ARB receives about 300 complaints per year regarding stationary sources. The first step for ARB is to refer these stationary-source complaints to the local air districts.

II. Complaint Resolution Protocol Agreement

A. Local Air District Activities

1. **Community Education and Capacity Building**

- a. Assist in Making Available the ARB Public Participation Guidebook (English and Spanish)
- b. Work with ARB and CAPCOA to Provide District-Specific Public Guidance Handbooks or Pamphlets (English and Spanish)
 - how to recognize an air quality problem
 - how to make a complaint regarding a neighborhood air quality problem
 - how to request public records, including air emissions from local facilities
 - how to identify available related information/sources on the Internet
- c. Notify the Public about the Availability of the Public Participation Guidebook and Related Pamphlets

2. **Receipt of Complaints**

- a. Methods
 - telephone (24 hours a day, 7 days per week)¹
 - written and electronic correspondence
 - in-person visit to district office
 - discussion with field staff
 - offer caller information about complaint process and availability of pamphlets and Guidebook
 - multiple language capability, as needed²
- b. Logging of complaint
 - record complaint information in database/log
 - if non-air-pollution related, refer to appropriate agency
 - otherwise, internally prioritize and assign
 - identity of complainants is confidential³
- c. After-hours complaints⁴
 - answering machine or answering service
 - staff on duty receives and prioritizes
 - if appropriate, inspector is dispatched
 - emergency response protocol in place

¹ Voice-mail or answering service provided after normal business hours.

² See Appendix.

³ Complaint reports are confidential except that they may be “discoverable” as part of a pending legal action.

⁴ District staff may not be available 24 hrs/day, but key personnel will be notified in emergency circumstances. See Appendix.

3. Investigation

a. Dispatch inspector

- may call complainant first for additional information
- time needed to arrive on scene depends on location and distance

b. Investigate – standard complaints

- observe situation (odor, smoke, wind direction)
- gather evidence, which may include collecting samples
- for public nuisance complaints, confirm offending situation, if possible, and record number of complainants
- talk to complainant(s), if possible
- determine source of emissions, if possible
- if emissions from a facility, then enter and inspect, if possible
- verify basis for complaint
- determine if violation has occurred
- document investigation

c. Investigate – ongoing complaints

- items contained under 3(b) above
- enhanced site surveillance
- enhanced off-hours response¹
- site-specific (community) air quality monitoring by local district (possibly with ARB or community assistance), as appropriate¹
- conduct other types of air quality sampling, as appropriate¹

4. Outcomes/Remedies (Enforcement Action as Appropriate)

- bring facility back into compliance
- issue Notice(s) to Comply
- issue Notice(s) of Violation
- seek appropriate mitigation or pollution prevention actions
- seek penalties, within statutorily and District-approved levels and in accordance with statutory criteria², that provide adequate deterrence to future non-compliance or public nuisance
- initiation of administrative proceeding to obtain compliance (e.g., order of abatement, permit revision, permit revocation)

5. Feedback to Public

a. Complaint reports

- notify complainants, in writing or verbally, about outcome of investigation upon completion³

¹ See Appendix.

² Health & Safety Code Section 42403.

³ If a verbal response is used to notify non-English-speaking complainants, local air districts will use one of a variety of approaches, including an over-the-phone interpretation service sponsored by ARB. See Appendix.

- if investigation is ongoing, notify complainants of status within ten days of complaint¹
 - although identity of complainants is confidential², investigation reports, upon completion, are available to the public
 - make final Notice-of-Violation information available quarterly in print or on district web site
- b. Customer service survey, as resources allow
- used by some districts
 - can be effective in improving complaint response

B. Air Resources Board (ARB) Activities

1. Community Education and Capacity Building

- a. Develop and Make Available an ARB Public Participation Guidebook (English and Spanish)
- b. Work with CAPCOA to Provide District-Specific Public Guidance Handbooks or Pamphlets (English and Spanish)
- how to recognize an air quality problem
 - how to make a complaint regarding a neighborhood air quality problem
 - how to request public records, including data on local emission sources
 - how to identify available related information/sources on the Internet
- c. Notify Public about the Availability of the Public Participation Guidebook and Related Pamphlets

2. Receipt of Complaints

- a. Methods
- toll-free telephone number (24 hours a day, 7 days per week)³
 - written and electronic correspondence
 - multiple language capability, as needed⁴
- b. Logging of complaint
- record complaint information in database
 - if non-air-pollution related, refer to appropriate agency
 - if related to stationary sources, contact local air district

¹ If a verbal response is used to notify non-English-speaking complainants, local air districts will use one of a variety of approaches, including an over-the-phone interpretation service sponsored by ARB. See Appendix.

² Complaint reports are confidential except that they may be “discoverable” as part of a pending legal action.

³ (1-800-952-5588) Voice-mail provided after normal business hours.

⁴ See Appendix.

- otherwise, internally assign
 - if referred to local air district, notify complainant that local air district has 15 days to complete investigation
 - notify complainant that he or she can directly contact the local air district on facility-specific complaints
 - notify complainant about complaint process and availability of pamphlets and guidebook
 - identity of complainants is confidential¹
- c. After-hours complaints
- duty personnel periodically checks answering machine
 - if appropriate, duty personnel contacts local air district

3. Investigation

- a. Internal assignments
- mobile sources, vehicle fuels, and consumer products (direct ARB enforcement authority)
 - heavy-duty trucks and buses (ARB issues citations)
 - smoking automobiles (ARB issues notice letters)
 - agricultural burning complaint (assist districts)
 - special circumstances (assist districts)
 - multimedia investigations (coordinate within Cal/EPA)
 - for emergency response and other special circumstances, conduct site-specific (community) air quality monitoring
- b. Referral to local air districts
- stationary source (industrial and commercial) complaints
 - gas station vapor recovery complaints
 - open burning (i.e., agricultural and prescribed burning) complaints

4. Outcomes/Remedies (Enforcement Action as Appropriate)

- a. ARB internal assignments
- take appropriate enforcement action within the scope of ARB's enforcement authority, which may include issuing cease and desist orders and Notices of Violation
 - seek appropriate mitigation or pollution prevention actions
 - seek penalties, within statutory levels and in accordance with statutory criteria², that provide adequate deterrence to future non-compliance or public nuisance
- b. Referral to districts
- for district responses, see **II. A. 4** on p. 4
 - for district/ARB resolution, see **III. B. 2** on p. 8

¹ Complaint reports are confidential except that they may be "discoverable" as part of a pending legal action.

² Health & Safety Code Section 42403.

- chronic complaints or violations for specific categories of stationary sources may result in new or revised regulations

5. Feedback to Public

a. ARB internal assignments

- notify complainants, in writing or verbally, about outcome of investigation upon completion¹
- if investigation is ongoing, notify complainants of status within ten days of complaint¹
- although identity of complainants is confidential², investigation reports, upon completion, are available to the public

b. Referral to local air districts (also see Section III below)

- ARB/CAPCOA protocol gives districts 15 working days after receipt of the ARB letter to provide ARB with written complaint resolution or summary progress report
- local district to provide complainant with copy of complaint resolution or summary progress report concurrent with submittal to ARB
- if districts do not send a copy of the complaint resolution or summary progress report to the complainant(s), ARB will send a copy

III. ARB/District Roles Regarding Enforcement and Complaint Resolution

A. Enforcement

1. Training

a. Courses

- visual emissions evaluation (VEE) certification
- series of courses on fundamentals of enforcement, processes, and equipment (dry cleaners, gas stations, baghouses, aggregate plants, etc.)
- annual multimedia enforcement symposium

b. Reference material

- manuals related to courses
- pamphlets for districts, business owners, and public

¹ If a verbal response is used to notify non-English-speaking complainants, ARB will use one of a variety of approaches, including an over-the-phone interpretation service. See Appendix.

² Complaint reports are confidential except that they may be “discoverable” as part of a pending legal action.

2. Local Air District Assistance

a. Requested by Local Air District

- specific facility issues
- source-testing needed
- emergency response

b. Standing ARB programs

- district permitting and enforcement program audits
- asbestos demolition/renovation enforcement and training
- rule effectiveness field studies
- tracking of district variances, major-source inspections, significant violators, and continuous emission monitor (CEM) breakdown activities

B. Complaints to ARB regarding stationary sources

1. Referral to Local Air Districts

a. Timely referral

- telephone call as soon as possible, but within one business day
- FAX or letter follows

b. Local Air District response

- ARB/CAPCOA protocol gives 15 working days to investigate and respond to ARB
- if complaint resolution cannot be completed within 15 working days, district will forward a summary progress report
- some anonymous or non-specific complaints require no district response to ARB

2. ARB/District Complaint Resolution

a. Review district response

- if appropriate district action or response is taken on a timely basis, no further action by ARB is necessary
- if no timely response is taken by the local air district or the action taken appears to be inappropriate, ARB staff may request further information

b. ARB/district conference

- if ARB is not satisfied with the local air district response, ARB tries to resolve the issue via telephone discussions with district staff
- if necessary, ARB and district staff may meet to confer in an effort to resolve differences

c. ARB field inspection

- in certain circumstances, ARB staff may elect to conduct a field inspection

- appropriate local air district will be notified in advance and encouraged to accompany ARB staff on the inspection
 - ARB will make inspection results available to the local air district
- d. Outcomes/Remedies
- Based on a review of the results of the inspection, and after consultation with the local air district, ARB will make a recommendation to the local air district.
 - The local air district will consider the ARB recommendation and take enforcement action, as necessary and appropriate.
 - If ARB is not satisfied with local air district enforcement action or response to complaint, ARB will initiate a telephone conference or meeting between the Air Pollution Control Officer and the ARB Executive Officer to discuss and resolve the complaint. The complaint resolution activities/actions at the local and State level will be reviewed with an emphasis on responding to complainant concerns and ensuring future compliance with applicable local and state rule and statutory requirements. Conference participants will identify future actions, if any, regarding the complaint.
- e. Response to complainant
- ARB will notify complainant regarding its actions and resolution of the problem, consistent with 2(a) and (d), above, if the information has not already been provided by the local district.¹

¹ If a verbal response is used to notify non-English-speaking complainants, ARB will use one of a variety of approaches, including an over-the-phone interpretation service. See Appendix.

COMPLAINT RESOLUTION PROTOCOL

APPENDIX

The Complaint Resolution Protocol represents a framework of best management practices for the local air districts and ARB to respond to complaints received from the public about sources of air pollution. This Appendix further clarifies the resources available to local air districts to meet local community needs.

All local air districts are committed to responding in a timely and appropriate way to complaints received from the public, including complaints received in languages other than English. Local air districts without the capabilities to translate complaints will work to develop partnerships with local governments or public service organizations in their areas to identify existing, locally-based sources of assistance to address language translation needs as they arise in the complaint-handling process.

Furthermore, the ARB will subscribe to an over-the-phone verbal translation service and will make it available to the local air districts to use at their request. This service will provide local air districts and the ARB with a backup capability to translate complaints over the phone, access translation services when in the field, and provide verbal feedback to the complainants regarding the results or status of the investigation.

When complaints or concerns about a local source of air pollution warrant the use of special air monitoring in the community, and the local air district does not have the resources to provide the monitoring, the local air district will seek partnerships with other agencies to try to address the community's needs. Other agencies that may have the expertise and equipment to assist in special monitoring include the ARB, larger air districts, U.S.EPA, or other agencies, depending on the specific situation.

All local air districts are committed to prompt response to complaints, and they all provide for complaints to be lodged outside of normal business hours. Local air districts may respond to non-emergency complaints on the following business day. All local air districts have procedures in place to respond to emergency situations. These include agreements with the local Office of Emergency Services, the local County administration, the local sheriff or police departments, or other agencies that the local air district identifies.